Supreme Court, U.S.
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No. 91-1096

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1991

EMOGENE WILLIAMS COBIN; BONNIE WILLIAMS GILBERT; CAROLINE WILLIAMS GILES; BARBARA WILLIAMS GUINN; VERNA WILLIAMS; HAMMOND; DONNA WILLIAMS LOCKHART; ERNESTINE WILLIAMS WEBB; DELAVAH WILLIAMS; JOHNNIE WILLIAMS; RICKY WILLIAMS; RONNIE WILLIAMS; AND SHARON WILLIAMS,
Petitioners

v.

JAMES T. CASTLEBERRY, CO-EXECUTOR OF THE ESTATE OF JOE L. CASTLEBERRY, DECEASED; CITY OF CONWAY, ARKANSAS; FAULKNER COUNTY, ARKANSAS; JOE MARTIN; AND JOCILE C. PERRY, CO-EXECUTOR OF THE ESTATE OF JOE L. CASTLEBERRY, DECEASED,
Respondents

On Petition for A Writ of Certiorari
To The United States Court of Appeals for
The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' STATEMENT OF QUESTIONS PRESENTED

I

Whether the Petition for Writ of Certiorari should be allowed for a determination whether the ruling of the Court of Appeals was clearly erroneous in holding that respondents' reasons given for exercising their peremptory challenges were not discriminatory.

II

Whether the Petition for Certiorari should be allowed for a determination regarding comparisons of juror characteristics where facially neutral explanations of peremptory challenges against blacks have been given.

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STATEMENT OF THE CASE

This litigation involves a civil rights case filed in 1984 brought under 42 U.S.C. Section 1983. The survivors of Marvin Williams, who died in the Faulkner County, Arkansas, jail on May 6, 1960, filed suit alleging that the decedent had been falsely arrested, beaten, and denied medical treatment, all at the hands of white law enforcement officers, and that he had died as a result of such actions in violation of his civil rights. It was further alleged that certain of the defendants had conspired to cover up the true cause of death for twenty-four years until a witness, a convict in an Arkansas prison, gave an account of the facts supporting the petitioners' claims to an investigative reporter, and eventually testified at trial.

The original defendants included the City of Conway, Arkansas, its two arresting policemen, Faulkner County, Arkansas, its sheriff and his chief deputy, and the prosecuting attorney who handled the coroner's inquest following the death. All parties except the county, its sheriff and his deputy were dismissed below on statute of limitations issues. The city police officers were later indicted by a grand jury on murder charges and, after a lengthy trial, were found not guilty. As to these respondents, it was alleged that, as jailers, they took custody of the decedent, and were either aware of or participated in his beating. Moreover, they allegedly were negligent in failing to provide the medical care he needed, and he died as a result of the beating and lack of care.

The case was tried before an all white jury of twelve persons over a five-day period in July of 1988. Of the twenty-one person jury panel, three were black, and one of those was excused for cause. Defense counsel exercised peremptory challenges to exclude the remaining two venirepersons,

namely James Fountain and Viola Sebastian, as well as one white woman. The petitioners timely objected to the challenges on equal protection grounds, moving for a mistrial. The district court considered the issue, and without the need for ruling whether *Batson v. Kentucky*, 476 U.S. 79 (1986) applied to this civil case, defense counsel volunteered their grounds for exercising the objectionable strikes.

They explained that they excused Ms. Sebastian because, due to her slow and tentative manner, as well as general lack of responsiveness, they did not believe she had the intelligence to understand the technical medical and forensic evidence to be presented over an extended trial. As to Mr. Fountain, he was stricken since he seemed "squirley", as evidenced by the fact he had a master's degree in psychology, had taught at several universities yet was unemployed presently, was the divorced father of five, and had sued his university employer. Based upon these representations, the district court found the peremptory challenges to have been race-neutral in motivation, without the discriminatory intent proscribed by *Batson*, and denied the motion for a mistrial.

The case proceeded to trial, and after five days of testimony, the jury unanimously returned a verdict on interrogatories for the respondents on all counts. The petitioners filed a motion for a new trial on the jury selection issue, questioning the peremptory challenge of Sebastian, but without mention of Fountain. After holding its decision under advisement pending an Eighth Circuit case applying *Batson* to civil cases involving governmental actors, the trial court denied the motion for new trial in furtherance of its finding during the trial that the respondents had articulated a neutral justification for the challenges. *Williams v. Faulkner County*, LR-C-84-791 (E.D.Ark., June 27, 1990)

The petitioners appealed, and the Eighth Circuit Court of

Appeals affirmed the trial court decision on April 24, 1991, in a *per curiam* decision that the lower court's findings were supported by the record. *Cobin v. Castleberry*, 90-2276 (8th Cir., April 24, 1991).

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI SHOULD NOT BE ALLOWED FOR A DETERMINATION WHETHER THE RULING OF THE COURT OF APPEALS WAS CLEARLY ERRONEOUS IN HOLDING THAT RESPONDENTS' REASONS GIVEN FOR EXERCISING THEIR PEREMPTORY CHALLENGES WERE NOT DISCRIMINATORY.

Petitioners invoke the jurisdiction of the United States Supreme Court pursuant to Rule 10(l)(c) of the Rules of the Supreme Court [and presumably pursuant to 28 U.S.C., Section 1254(1)]. That rule provides as follows:

> "A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> . . . .
>
> (c) When a state court or a United States court of appeals has decided an important question of federal

> law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court."

Clearly the jurisdiction of this Court is meant by this rule to be extended with questions of law in the federal realm, as opposed to questions of fact. Yet the first issue posed by the petitioners just as clearly involves a question of fact, whether there was factual evidence in the record for the district court and appeals court to find that the reasons given by defense counsel for exercising the challenges were race neutral. For the sake of brevity, respondents will not argue herein the facts to rebut the allegations of the petitioners. Respondents will, instead, rely upon the decision of the district court (A. 10), in its memorandum and order denying the motion for new trial, which clearly set out its findings of facts with regard to the two venirepersons in question. After it carefully examined the record, the Court of Appeals affirmed the district court's findings that defense counsel exercised their strikes according to neutral criteria, and not for racially discriminatory purposes, as supported by the record. (A. 1-2, pp. 6-7).

Previous decisions of this court have denied petitions for writs of certiorari to review evidence and address specific facts. In *United States v. Johnston*, 268 U.S. 220, 69 L.Ed. 925, 45 S.Ct. 496 (1925), Mr. Justice Holmes said "We do not grant a certiorari to review evidence and discuss specific facts." Writs of certiorari will not be granted by the Supreme Court except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70, 99 L.Ed. 897, 75 S.Ct. 614 (1955). The Supreme Court will not ordinarily grant certiorari to review judgments based solely on questions of fact. *NLRB v. Waterman S.S. Corp.*, 309 U.S. 206, 84 L.Ed. 704, 60 S.Ct. 493 (1940). Moreover, this

Court has repeatedly held that appellate courts must constantly have in mind that their function is not to decide factual issues de novo. Their authority, in reviewing findings of the judge, as well as those of the jury, is circumscribed by the deference it must give to decisions of the trier of fact, who is usually in a superior position to appraise and weigh evidence. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 23 L.Ed.2d 129, 89 S.Ct. 1562 (1969).

The petitioners are now represented by different counsel from those representing them below. Neither they nor this court has had the benefit of the trial judge, handling the voir dire jury selection *in camera* on a one-to-one basis, in evaluating the jurors and the process. Respondents maintain that this court should not grant certiorari to review evidence, but should give due deference to the trier of fact, and deny the petition.

II.

THE PETITION FOR CERTIORARI SHOULD NOT BE ALLOWED FOR A DETERMINATION REGARDING COMPARISONS OF JUROR CHARACTERISTICS WHERE FACIALLY NEUTRAL EXPLANATIONS OF PEREMPTORY CHALLENGES AGAINST BLACKS HAVE BEEN GIVEN.

As was the case with the first issue above raised by the petitioners, jurisdiction of the Court is invoked pursuant to Rule 10(1)(c) of the Rules of the Supreme Court on the basis of alleged important federal questions of law yet settled. Yet as was also the case on the first question above, the issue raised by petitioners does not deal with an important federal question of law in need of resolution, and certiorari should not be granted.

As petitioners recite in their own argument (pp. 29-30), the Eighth Circuit has already established the "comparability" standard which the petitioners seek this Court to institute. In both *United States v. Wilson*, 853 F.2d 606 (9th Cir. 1988) and *Garrett v. Morris*, 815 F.2d 509 (8th Cir. 1987) (Cert. denied, 484 U.S. 898, 98 L.Ed.2d 91, 108 S.Ct. 233 (1987), blacks were excluded as jurors on the basis of pretextual explanations. In the course of determining whether racially discriminatory practices had been used, the Eighth Circuit employed the "comparability" standard by viewing the characteristics of the individual which prompted the government's strike with characteristics of those not struck by the government.

An examination of the district court's memorandum and order denying the motion for new trial reveals that the court employed this test in arriving at its decision. The court says:

> "Unlike *Wilson*, the explanation offered by the defendants for striking Ms. Sebastian does not depend on her racial affiliation. If through voir dire, or otherwise, it develops that a particular juror is deficient in the intelligence needed to understand some aspect of the case, then that circumstance will provide an adequate basis for exercise of a peremptory challenge under *Batson*. Such assessments are indeed subjective. Yet it is the very essence of the peremptory challenge to allow an attorney to 'act on only limited information or hunch' exercising his 'intuitive judgment' that a particular juror would be unfit for the case to be tried. *Batson*, 476 U.S. at 123. *Batson* modifies the breadth of an attorney's discretion to strike jurors by foreclosing as a possible reason for such strikes the intuitive judgment that a potential juror will favor his client's adversary because of shared racial or ethnic affiliation. *Batson* does not

> prohibit subjective assessments of a juror's qualifications when such assessments are based on qualities other than race." (Appendix pp. 28-29, C. 10)

The Court goes on to say:

> "Having conducted the *voir dire* in chambers, on a one-to-one basis, and having had the opportunity to closely observe the demeanor of the jurors, the Court finds that the defendants' proffered explanation was clear and specific and entirely credible. Moreover, it is clear to the Court that none of the other white venirepersons who formed the petit jury exhibited characteristics comparable to those that led the defendants to make their strikes." (Appendix C-10) (Emphasis added).

Clearly, the Eighth Circuit has already established the "comparability" standard which the petitioners seek the court to impose upon review of the case. Petitioners do not allege that test to be in error, nor do they make reference of any kind to contrary holdings of other jurisdictions which require review in order to establish uniformity of decisions in the federal appellate system. Assuming, for purposes of argument, that this court upheld the *Wilson* "comparability" standard, the legal result presumably would be no different since that test was applied below. In effect, the argument propounded by petitioners questions the findings of fact made by the district court and affirmed by the Court of Appeals in applying the comparability tests to individual venirepersons. No important federal question is raised by petitioners, and their petition for certiorari should be denied.

CONCLUSION

While this case carries issues of importance to the parties, it does not involve any noteworthy legal principles. Petitioners effectively seek review by the court of factual decisions made below. This decision does not require the resolution of any important federal issues, nor does it conflict with rulings from other courts. In summary, there is no significant or compelling reason to review the matter, and the petition for certiorari should accordingly be denied.

Respectfully submitted,

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